

1 HOUSE BILL NO. 513

2 INTRODUCED BY M. NOLAND

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA
 5 STATE FUND; ELIMINATING THE STATE FUND'S AUTHORITY TO ISSUE DIVIDENDS; REVISING LAWS
 6 RELATING TO COMPENSATION OF THE STATE FUND EXECUTIVE DIRECTOR AND MANAGEMENT
 7 STAFF; AMENDING SECTIONS 39-71-2311, 39-71-2315, 39-71-2316, 39-71-2317, 39-71-2319, 39-71-2330,
 8 AND 39-71-2363, MCA; REPEALING SECTION 39-71-2323, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11

12 **Section 1.** Section 39-71-2311, MCA, is amended to read:

13 **"39-71-2311. Intent and purpose of plan -- expense constant defined.** (1) It is the intent and
 14 purpose of the state fund to allow employers an option to insure their liability for workers' compensation and
 15 occupational disease coverage with the state fund. The state fund must be neither more nor less than self-
 16 supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of
 17 the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the
 18 end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make
 19 every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and
 20 difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs
 21 rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk
 22 and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated
 23 premium for workers' compensation purposes.

24 (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set
 25 higher than necessary because of a high estimate of the cost of a factor or factors ~~may be refunded by the~~
 26 ~~declaration of a dividend as provided in this part~~ must be held in trust as provided in 39-71-2322. For the
 27 purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as
 28 provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

1 (3) As used in this section, "expense constant" means a premium charge applied to each workers'
2 compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the
3 policy."

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5 **Section 2.** Section 39-71-2315, MCA, is amended to read:

6 **"39-71-2315. Management of state fund -- powers and duties of board -- business plan**

7 **required.** (1) The management and control of the state fund is vested in the board, subject to the statutory
8 limitations imposed by Title 33 and this part.

9 (2) The board is vested with full power, authority, and jurisdiction over the state fund except that the
10 board may not dissolve or liquidate the state fund. To fulfill the objectives and intent of this part, the board may
11 perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the
12 administration of the state fund or in connection with the insurance business to be carried on under the
13 provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier and
14 subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in 33-1-115
15 and 39-71-2375.

16 (3) Neither the board, the state fund, nor the executive director may:

17 (a) __issue bonds on behalf of the state fund; or

18 (b) declare dividends from the state fund over estimated premium, assets, reserves, or surplus.

19 (4) (a) The board shall adopt a business plan no later than December 31 for the next fiscal year.

20 (b) At a minimum, the plan must include:

21 (i) specific goals for the fiscal year for financial performance. The standard for measurement of
22 financial performances must include an evaluation of premium to surplus.

23 (ii) specific goals for the fiscal year for operating performance. Goals must include but not be limited to
24 specific performance standards for staff in the area of senior management, underwriting, and claims
25 administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

26 (5) The business plan must be available upon request to the general public for a fee not to exceed the
27 actual cost of publication. However, performance goals relating to a specific employment position are
28 confidential and not available to the public.

1 (6) No sooner than January 1 or later than March 31, the board shall convene a public meeting to
 2 review the performance of the state fund, using the business plan for comparison of all the established goals
 3 and targets. The board shall publish, by May 30 of each year, a report of the state fund's actual performance as
 4 compared to the business plan.

5 (7) ~~The state fund board of directors~~ shall establish in-house guidelines for procurement of insurance-
 6 related services and shall include guidelines for the solicitation of submissions of information regarding
 7 insurance-related services from more than one vendor. The board may include guidelines for the circumstances
 8 when business necessity or expedience may preclude the solicitation of submissions from more than one
 9 vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132."

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11 **Section 3.** Section 39-71-2316, MCA, is amended to read:

12 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund
 13 may:

14 (a) insure any employer for workers' compensation and occupational disease liability as the coverage
 15 is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance
 16 upon approval of the board;

17 (b) sue and be sued;

18 (c) enter into contracts relating to the administration of the state fund, including claims management,
 19 servicing, and payment;

20 (d) collect and disburse money received;

21 (e) except as provided in subsection (1)(f), use the uniform classification system as required in 33-16-
 22 1023 and charge premiums for the classifications so that the state fund will be neither more nor less than self-
 23 supporting;

24 (f) continue the use of special classification codes that were in use prior to January 1, 2016, for
 25 agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the
 26 commissioner rates and supplementary rate information for these special classifications.

27 (g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the
 28 board may adopt experience modification thresholds for use by the state fund for its insured employers;

- 1 (h) pay the amounts determined to be due under a policy of insurance issued by the state fund;
- 2 (i) hire personnel;
- 3 ~~(j) declare dividends if there is an excess of assets over liabilities. However, dividends may not be~~
 4 ~~paid until adequate actuarially determined reserves are set aside.~~
- 5 ~~(k)(j)~~ adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;
- 6 ~~(l)(k)~~ upon approval of the board, contract with licensed resident insurance producers;
- 7 ~~(m)(l)~~ upon approval of the board, enter into agreements with licensed workers' compensation
 8 insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other
 9 states to Montana-domiciled employers insured with the state fund;
- 10 ~~(n)(m)~~ upon approval of the board, expend funds for scholarship, educational, or charitable purposes;
- 11 ~~(o)(n)~~ upon approval of the board, including terms and conditions, provide employers coverage under
 12 the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant
 13 Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.; or
 14 ~~(p)(o)~~ subject to the provisions of Title 33 and this chapter, perform all functions and exercise all
 15 powers of a private insurance carrier that are necessary, or appropriate, ~~or convenient~~ for the administration of
 16 the state fund.
- 17 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part
 18 that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in
 19 39-71-2320."

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21 **Section 4.** Section 39-71-2317, MCA, is amended to read:

22 **"39-71-2317. Appointment of executive director -- management staff.** (1) The board shall appoint
 23 an executive director of the state fund who has general responsibility for the operations of the state fund. The
 24 executive director must have executive level experience, with knowledge of the insurance industry.

25 (2) The executive director shall serve at the pleasure of the board. The executive director must
 26 receive compensation as set by the board and serve at the pleasure of the board that may not exceed 150% of
 27 the governor's compensation.

28 (3) The executive director may hire the management staff of the state fund, each of whom serves at

1 the pleasure of the executive director. The compensation of any management staff may not exceed 150% of
2 the governor's compensation."

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4 **Section 5.** Section 39-71-2319, MCA, is amended to read:

5 **"39-71-2319. Assets and liabilities of prior state fund.** All assets and funds held by the state
6 compensation insurance fund established in former 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306,
7 and 39-71-2324, and 39-71-2321 through ~~39-71-2323~~ and ~~39-71-2322~~, 39-71-2325 through 39-71-2327, 39-71-
8 2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume
9 liability for all outstanding claims and indebtedness of the previously existing state fund."

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11 **Section 6.** Section 39-71-2330, MCA, is amended to read:

12 **"39-71-2330. Rate setting -- surplus -- multiple rating tiers.** (1) The board has the authority to
13 establish the rates to be charged by the state fund and the supplementary rate information to determine the
14 applicable premium as provided in 39-71-2311 and 39-71-2316 and shall file the rates and supplementary rate
15 information with the commissioner as provided in Title 33, chapter 16. The board shall engage the services of
16 an independent actuary who is a member in good standing with the American academy of actuaries to develop
17 and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the
18 estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the
19 state fund, and to amass and maintain ~~an excess of a surplus over the amount produced by the national~~
20 ~~association of insurance commissioners' risk-based capital requirements for a casualty insurer~~ as provided in
21 Title 33, chapter 2, part 19, and Title 33, chapter 16, part 10.

22 (2) Because surplus is desirable in the insurance business, the board shall annually determine the
23 level of surplus that must be maintained by the state fund pursuant to this section. The state fund shall use the
24 amount of the surplus above the risk-based capital requirements to secure the state fund against various risks
25 inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-
26 based capital requirements.

27 (3) The board may establish multiple rating tiers for classifications that take into consideration losses,
28 premium size, and other factors relevant in placing an employer within a rating tier. The board shall file any

1 multiple rating tiers with the commissioner for review as provided in Title 33, chapter 16."

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3 **Section 7.** Section 39-71-2363, MCA, is amended to read:

4 **"39-71-2363. Agency law -- annual report.** (1) The state fund is subject to state laws applying to
5 state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative
6 Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund
7 may use the debt collection procedures provided in Title 17, chapter 4, part 1.

8 (2) ~~(a)~~ Except as provided in 2-15-2015, the executive director shall annually submit to the board for
9 its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal
10 year, with due regard to the business interests and contract obligations of the state fund. A copy of the
11 approved budget must be delivered to the governor and the legislature.

12 ~~(b) Dividends may not be included as administrative expenditures as provided in subsection (2)(a) but~~
13 ~~are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income~~
14 ~~from operations.~~

15 (3) The board shall submit an annual financial report to the governor and to the legislature as
16 provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a
17 statement of the estimated liabilities of the state fund as determined by an independent actuary."

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19 **NEW SECTION. Section 8. Repealer.** The following section of the Montana Code Annotated is
20 repealed:

21 39-71-2323. Surplus in state fund -- payment of dividends.

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23 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2021.

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